

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Declaratory Ruling That tw)	WC Docket No. 11-119
telecom inc. Has The Right To Direct IP-to-IP)	
Interconnection Pursuant To Section 251(c)(2))	
Of The Communications Act, As Amended,)	
For The Transmission And Routing of tw)	
telecom's Facilities-Based VoIP Services And)	
IP-In-The-Middle Voice Services)	
)	

COMMENTS OF THE NEBRASKA RURAL INDEPENDENT COMPANIES

Dated: August 15, 2011

The Nebraska Rural Independent Companies

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TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
SUMMARY OF COMMENTS.....	ii
I. INTRODUCTION	1
II. TO SET THE FOUNDATION FOR FURTHER ACTIONS, THE COMMISSION SHOULD DECLARE IP-BASED VOICE SERVICE TO BE A TELECOMMUNICATIONS SERVICE AS TWTC REQUESTS, AND THAT THE ENTITY PROVIDING SUCH SERVICE BE DESIGNATED AS A TELECOMMUNICATIONS CARRIER.	4
III. ASSUMNG ARGUENDO, THAT TWTC’S SERVICES ARE NOT TELECOMMUNICATIONS SERVICES, COMPREHENSIVE AND CLEAR ARTICULATION OF COMPENSATION OBLIGATIONS OF CARRIERS IN THE TRANSITION FROM TDM NETWORKS TO IP NETWORKS IS ALSO NECESSARY.....	6
A. If the Commission were to now Determine that IP-based Services are not Telecommunications Services, Existing Compensation Requirements and Cost Recovery Mechanisms Must Be Affirmed at the Same Time as IP-Based Interconnection Rights and Requirements are Established.	7
B. Likewise, if the Commission were to now Determine that IP-based Services are not Telecommunications Services, Access and Reciprocal Compensation Regimes must be Maintained in an IP Environment.....	9
C. Moreover, if the Commission were to now Determine that IP-based Services are not Telecommunications Services, Existing Traffic Identification Rules to Avoid Arbitrage must also be Enacted.....	9
IV. THE COMMISSION SHOULD DETERMINE TECHNICAL AND OPERATIONAL IP-TO-IP NETWORK ISSUES IN A COMPREHENSIVE PROCEEDING ADDRESSING SUCH ISSUES.	11
V. CONCLUSION.....	14

SUMMARY OF COMMENTS

The Nebraska Companies respectfully request that the Commission declare that TWTC's services are, in fact, telecommunications services and declare that TWTC is a telecommunications carrier under the Communications Act of 1934 as amended (the "Act") when it provides those services. With these two declarations, TWTC would then be subject to the rights and responsibilities under section 251 and section 252 to seek negotiation and/or arbitration of interconnection agreements under the framework of those sections, including application of the existing financial requirements for the exchange of such traffic (*i.e.*, the application of reciprocal compensation and exchange access regimes). Nonetheless, a variety of technical issues still need to be resolved that are associated within Internet Protocol ("IP") interconnection that may be best addressed through national standards developed by the Commission. Until that time, however, state commissions would be able to "fill-in-the-blanks" regarding the technical requirements of IP-to-IP and IP-to-Time Division Multiplex ("TDM") services (where TDM is being used on at least some portion of the exchange of traffic).

Assuming, however, that the Commission is *not* in the position to make each of the declarations noted above, uncertainty would remain regarding with the proper application of the reciprocal compensation and access charge financial requirements and technical standards for IP-to-IP interconnection. Thus, if the declarations are not made, the Commission should, in order to advance the public interest, undertake a comprehensive evaluation of the interconnection and compensation issues raised by the migration of current networks to an all "IP-to-IP" world. This approach is even more necessary since recent filings by the larger price cap ILECs attempt to capitalize upon the lack of specific directives regarding IP interconnection, suggesting that

market participants rely on “commercial agreements” versus the structure provided by Congress under sections 251 and 252 of the Act.

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VoIP Services And IP-In-The-Middle)	
Voice Services)	

COMMENTS OF THE NEBRASKA RURAL INDEPENDENT COMPANIES

I. INTRODUCTION

The Nebraska Rural Independent Companies (the "Nebraska Companies")¹ hereby submit comments in response to Petition for Declaratory Ruling filed by tw telecom, inc. ("TWTC") (the "*Petition*"). The Nebraska Companies appreciate the opportunity to file comments in response to the Public Notice released by the Federal Communications Commission (the "Commission") on July 15, 2011 (DA 11-1198).

TWTC seeks a declaration that it has the right under Section 251(c)(2) of the Communications Act of 1934, as amended (the "Act") to establish direct IP-to-IP interconnection with incumbent local exchange carriers ("ILECs") for the transmission and routing of its facilities-based VoIP services as well as its IP-in-the-middle voice

¹ The Nebraska Companies are: Arlington Telephone Company, Blair Telephone Company, Cambridge Telephone Co., Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hamilton Telephone Company, Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., K & M Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Stanton Telephone Co., Inc., and Three River Telco.

services.² In addition to the foregoing declaration, TWTC incidentally seeks a declaration that such services are telecommunications services and either telephone exchange services and/or exchange access.

For the reasons stated herein, the Nebraska Companies respectfully request that the Commission declare that TWTC's services are, in fact, telecommunications services and declare that TWTC is a telecommunications carrier under the Communications Act of 1934 as amended (the "Act") when it provides those services.³ The Commission should also then declare that, as a telecommunications carrier under the Act seeking to exchange telecommunication service traffic with other telecommunications carriers, TWTC would be subject to the rights and responsibilities under section 251 and section 252 to seek negotiation and/or arbitration of interconnection agreements under the framework of those sections, including application of the existing financial requirements for the exchange of such traffic (*i.e.*, the application of reciprocal compensation and exchange access regimes). At the same time, however, a variety of technical issues still need to be resolved that are associated within Internet Protocol ("IP") interconnection that may be best addressed through national standards developed by the Commission. Until that time, however, state commissions would be able to "fill-in-the-blanks" regarding the technical requirements of IP-to-IP services, just they have done for IP-to-Time Division Multiplex ("TDM") services in the past.

² While the Nebraska Companies are each rural telephone companies and thus are not subject to the requirements of 47 U.S.C. § 251(c)(2) until and unless their respective Congressionally created "exemption" is removed (*see* 47 U.S.C. § 251(f)(1)), the issues raised by the *Petition* are such that the proper framework under which IP-to-IP interconnection is addressed warrants their participation in this docket.

³ *See* 47 U.S.C. § 3(44) (Definition of "Telecommunications Carrier") and 47 U.S.C. § (3)(46) (Definition of "Telecommunications Service").

Assuming, however, that the Commission is *not* in a position to declare that the TWTC proposed services are, in fact, telecommunications services and to declare that TWTC is *not*, in fact, a telecommunications carrier when providing such services, even more uncertainty would be created around the proper application of the reciprocal compensation and access charge financial requirements and technical standards for IP-to-IP interconnection.⁴ Thus, if the Commission does not determine the status of the services that TWTC provides or TWTC's status when it provides such services, the Nebraska Companies respectfully submit that the Commission should undertake a proceeding addressing a comprehensive evaluation of the interconnection and compensation issues raised by the migration of current networks to an all "IP-to-IP" world. Such action is not only necessary but fully consistent with the public interest⁵ since far-reaching intercarrier interconnection and intercarrier compensation issues must be addressed in order to establish a rational and otherwise sustainable IP-to-IP interconnection framework. This approach is even more necessary since recent filings by the larger price cap ILECs attempt to capitalize upon the lack of specific directives regarding IP interconnection, suggesting that market participants rely on "commercial

⁴ The Nebraska Companies note specifically that any uncertainty regarding the applicable financial rules to the exchange of traffic is self created by those entities that attempt to take regulatory silence to suggest that the rules and policies that are in place do not apply. Of course, such self-created uncertainty has no merit and the Commission should say so.

⁵ If the Commission does not determine the status of the services that TWTC describes or TWTC's status when it provides such service, the Nebraska Companies recognize that the Commission has a variety of proceeding that may be appropriate for the consideration of these issues, including a long-standing and on-going proceeding regarding IP-enabled services. The Nebraska Companies take no position as to whether the Commission should evaluate the full panoply of IP-to-IP interconnection issues in such proceeding or whether the Commission should commence a new proceeding for such purpose. Rather, the overarching point is that piecemeal directives in this area should not and cannot be a rational method for resolving IP-to-IP interconnection.

agreements” versus the structure provided by Congress under sections 251 and 252 of the Act.⁶ The directives sought herein by the Nebraska Companies can be more properly fully developed in the context of rulemaking versus a declaratory ruling. Absent such a rulemaking, the public interest will be undermined.

II. TO SET THE FOUNDATION FOR FURTHER ACTIONS, THE COMMISSION SHOULD DECLARE IP-BASED VOICE SERVICE TO BE A TELECOMMUNICATIONS SERVICE AS TWTC REQUESTS, AND THAT THE ENTITY PROVIDING SUCH SERVICE BE DESIGNATED AS A TELECOMMUNICATIONS CARRIER.

The Nebraska Companies agree with TWTC that, in every relevant respect, IP-based telephone services provide functionalities that closely resemble traditional, TDM-based telephone services.⁷ Further, these services are offered in a manner – as a general holding out – that makes the entity providing them a telecommunications carrier. The Nebraska Companies recognize that as providers migrate their networks from TDM-based services to IP-based services, it is rational for established rules governing interconnection of carriers’ networks to be applicable in order to ensure the seamless provision of services.⁸ As a result, these rules would, in the first instance, be those that

⁶ See, Submission of AT&T et al. Docket 10-90 et al, July 29, 2011 (the “ABC Plan”), Attachment 1, at 10; see also Public Notice, DA 11-1348, released August 3, 2011. Although the Nebraska Companies reference the “ABC Plan” in these comments, the Nebraska Companies intend to submit comments on August 24, 2011 to set forth their positions regarding the ABC Plan. See *id.*

⁷ *Petition* at 3.

⁸ Historically, the public switched telephone network has experienced several technological changes, including introduction of digitized voice coding, multiplexing in trunks, elimination of in-band signaling, and even conversion of data to telephone-specific (non-IP) packet formats. However, these technological changes have not required modification of basic definitions of the Act. As TWTC points out, protocol conversions are frequent in the wireless industry, including GSM, CDMA, TDM and all-IP 4G. See *id.* at 13. None of these technology changes has removed voice communications from the definition of telecommunications service. This history is consistent with the explicit terms of the Act, which defines telecommunications service

apply to the intercarrier compensation requirements of all telecommunications carriers exchanging traffic with other telecommunications carriers, *i.e.*, reciprocal compensation under 47 U.S.C. § 251(b)(5) and exchange access under applicable state and interstate access charge regimes.

The *Petition* demonstrates that the current network shift from TDM to IP is not unexpected based upon advancements in the technology utilized by the Public Switched Telephone Network (“PSTN”). As TWTC states, it would be “hard to find services that fit more squarely within the definition of telecommunications service than TWTC’s facilities-based VoIP services.”⁹ Given the functional similarities between traditional telephone service and IP-based voice service, the Nebraska Companies agree with TWTC’s position that the Commission should declare TWTC’s facilities-based VoIP services and its IP-in-the-middle telecommunications to be telecommunications services (as well as declare TWTC’s status as a telecommunications carrier when it provides such services). Yet, as explained below, this declaration does not and should not end the inquiry regarding the technical issues associated with the exchange of traffic in an IP-based environment nor would it resolve all technical/operational and financial issues that must be addressed regarding IP-to-IP interconnection should the Commission determine *not* to declare TWTC’s offerings to be telecommunications services and *not* declare that TWTC is a telecommunications carrier when providing those services.

While the classification of TWTC’s IP services as telecommunications services may appear to resolve the intercarrier compensation issues that are raised, the Nebraska

as independent of the “form or content of the information as sent or received.” *See* 47 U.S.C. § 153(46).

⁹ *Petition* at 10.

Companies respectfully submit that such conclusion only provides the first step in developing the necessary overarching framework for the industry to follow as the migration from TDM based networks and services further migrate to IP-based networks and services. Therefore, it is imperative that the Commission fully consider the necessary rules regarding the network/technical issues associated with IP-to-IP interconnection. Although these operational/technical issues would be addressed in the context of the section 251/252 interconnection process associated with a telecommunications carrier's request to exchange IP-based traffic subject to 47 U.S.C. § 251(b)(5) with an ILEC, these types of agreements may not resolve all required technical standards nor the desired level of technical uniformity that may be required in an "all "IP-to-IP" world. Thus, even if the Commission finds that TWTC is a telecommunications carrier providing telecommunications services when it exchanges the traffic that it has identified in the *Petition* with other telecommunications carriers, Commission involvement may be prudent in the establishment of technical standards.

III. ASSUMING ARGUENDO THAT TWTC'S SERVICES ARE NOT TELECOMMUNICATIONS SERVICES, COMPREHENSIVE AND CLEAR ARTICULATION OF COMPENSATION OBLIGATIONS OF CARRIERS IN THE TRANSITION FROM TDM NETWORKS TO IP NETWORKS IS ALSO NECESSARY.

The Nebraska Companies note that, if the Commission determines that TWTC's offerings are not telecommunications services and that TWTC is not a telecommunications carrier when it offers such services, a public policy vacuum would exist that will lead to the same degree of uncertainty that currently (and unfortunately) exists due to efforts by some parties to suggest that current intercarrier compensation does not apply to interconnection with networks using TDM. In this event, financial

obligations also must be addressed in order to ensure that no decision, however well intended, results in the use of another carrier's network and capabilities without due compensation.¹⁰

A. If the Commission Were to Now Determine that IP-based Services are not Telecommunications Services, Existing Compensation Requirements and Cost Recovery Mechanisms Must Be Affirmed at the Same Time as IP-Based Interconnection Rights and Requirements are Established.

The Commission should not allow the transition to IP to weaken or eliminate the interconnection rights or the financial rights, responsibilities and obligations of interconnecting carriers who are subject to the Commission's orders. Contrary to the apparent underlying operating premise of some entities in the industry, the migration to an all IP-to-IP method of exchanging traffic does not necessarily lead to the conclusion that such connections (and the networks that are being used for such connections) do not remain part of the PSTN.

Rather, the PSTN uses the North American Numbering Plan ("NANP") address space for telephone numbers and associates a telephone number with a particular communication device (POTS wireline, IP wireline, or wireless). This arrangement enables any voice user to originate and/or terminate voice calls by using the NANP designated telephone numbers. The Nebraska Companies therefore urge the Commission, once and for all: 1) to reject arguments that the current reciprocal compensation and exchange access regimes do not apply when IP-to-IP traffic is exchanged using the NANP telephone numbers for originating and/or terminating voice

¹⁰ The Nebraska Companies' discussion of the issue must presume that the jurisdiction of the states and the Commission remain unaltered since no determination justifying any preemption of the proper role of the states over intercarrier compensation regimes has occurred.

calls; and 2) to declare that such traffic exchange is using the PSTN. From this declaration, the Nebraska Companies respectfully submit that the Commission can then determine through a rulemaking what, if any, changes in the existing financial rules are required.

Moreover, if the Commission is not willing to hold that IP-to-IP interconnections are telecommunications services and that TWTC is a telecommunications carrier when offering those services, it would be wholly *improper* to consider a non-dynamic cost recovery model for the network upgrades required by a company to migrate its existing network to a full IP network. Since any new IP-to-IP interconnection requirement would be likely to require new equipment at each location where lawfully required IP interconnection is requested, local exchange providers subject to such requirement would be required to provide both IP-based and TDM-based interconnections at the same locations. Therefore, any suggestion that the Commission should simply mandate the acquisition of costly new equipment without providing a method for recovering those costs should be rejected outright.

While TWTC complains that some entities “have seized upon the industry's transition to IP technology as a pretext for denying competitive carriers the right to IP-to-IP interconnection under Section 251 (c)(2) for exchanging facilities-based VoIP traffic,”¹¹ neither should the use of IP technology be a pretext for the free (or the virtually free) use of another telecommunications carrier's network. If local exchange carriers must offer IP-to-IP interconnection, that should not be the occasion to bypass existing

¹¹ *Petition* at 5.

cost recovery rules that provide just and reasonable cost-based compensation to the very group that the Commission is requiring to comply with a costly new regulation.

B. Likewise, if the Commission Were to Now Determine that IP-based Services Are Not Telecommunications Services, Access and Reciprocal Compensation Regimes Must Be Maintained in an IP Environment.

The Commission long ago established detailed rules to compensate carriers when their networks are needed for interconnection of traffic generated by end users with whom they have no billing relationship. For landline carriers, those rules currently mandate access payments for toll traffic and reciprocal compensation for traffic originated by the party requesting termination.¹² Because VoIP traffic is, regardless of any protestations to the contrary, a telecommunications service like other voice services, and because telecommunications services are independent of the form or content of the information conveyed, any IP-to-IP interconnection that exchanges voice traffic must be accompanied by similar rules regarding the payment of access and reciprocal compensation. No one should expect or receive a “free ride” on the networks of other telecommunications carriers; a public policy vacuum that apparently encourages such contentions should be ended.

C. Moreover, if the Commission Were to Now Determine that IP-based Services Are Not Telecommunications Services, Existing Traffic Identification Rules to Avoid Arbitrage Must Also be Enacted.

While the technical/operational specifications of IP interconnection are different, the goal as it relates to voice traffic is the same. The Nebraska Companies have previously demonstrated that, to avoid creating new arbitrage opportunities, the Commission must treat all traffic terminating on the PSTN equally regardless of the

¹² 47 C.F.R. § 51.702(e).

regulatory classification or the technology used.¹³ The Nebraska Companies have also previously demonstrated that the Commission should not distinguish between “fixed” and “nomadic” VoIP-PSTN services.¹⁴ In IP-to-IP interconnection as in TDM interconnection, call signaling rules must ensure that service providers receive sufficient information associated with each call terminated on their networks to identify the provider that is financially obligated for terminating compensation.

Thus, the Commission should investigate and propose rules that address the transition to an all IP-to-IP world. The Nebraska Companies respectfully suggest that, in resolving this investigation, the Commission should ensure that all parties seeking termination through an IP-to-IP interconnection (as well as in an IP-to-TDM interconnection) be required to provide information to the terminating carrier sufficient to:

1. Identify the traffic as VoIP traffic;
2. Identifying the financially responsible party;¹⁵ and
3. Determine whether traffic is subject to the Commission’s rules for reciprocal compensation or to rules and rates for access.

¹³*In the Matter of the Connect America Fund*, WC Docket 10-90, *Section XV Comments of the Nebraska Rural Independent Companies*, at 2-5 (April 1, 2011).

¹⁴ *See id.* at 3-5.

¹⁵ In the absence of sufficient billing information for the financially responsible carrier, the Commission should determine a default position that allows the terminating carrier to bill the interconnected party for terminated traffic. To capture all of the VoIP-PSTN voice traffic that may not have a telephone number associated with it, the Commission must also require originating carriers to provide alternative information, such as the originating carrier and/or IP addresses associated with the calling party, to the terminating carrier to ensure proper billing.

While the concepts associated with IP interconnection are vaguely referenced in the recent ABC Plan for intercarrier compensation reform, even that Plan apparently recognizes the need to exchange call detail related to the exchange of VoIP traffic for rating purposes.¹⁶ Even if the Commission grants the *Petition* for IP-to-IP interconnection and if it also approves the ABC Plan as filed, the Commission will still have to explain the “call detail” that is required to implement the ABC Plan.

VoIP traffic would not be uniquely burdened by such rules. To the contrary, a special exemption for VoIP traffic would unjustly enrich VoIP providers, improperly penalize local exchange carriers who have been terminating such calls, and create new arbitrage opportunities, in violation, for example, of sections 201 and 252(d)(1) of the Act. Further, to mandate local exchange carriers to provide unlimited VoIP calls with uncompensated access to their networks would violate several provisions of law. It would violate other provisions of section 252(d)(1) which mandate that interconnection compensation be based on cost and allow a reasonable profit.¹⁷ It would also violate the United States Constitution, which prohibits an uncompensated taking of property for public purposes.

IV. THE COMMISSION SHOULD DETERMINE TECHNICAL AND OPERATIONAL IP-TO-IP NETWORK ISSUES IN A COMPREHENSIVE PROCEEDING ADDRESSING SUCH ISSUES.

IP-to-IP interconnection presents a host of new, complex technical issues. Thus, while Sections 251 and 252 generally encourage telecommunications carriers to negotiate interconnection obligations, policies and rules regarding the technical aspects of IP interconnection do not fall neatly into such obligations. The Commission recognizes that

¹⁶ See, ABC Plan, Attachment 1, at 10.

¹⁷ 47 U.S.C. § 252(d)(1).

some apparent lack of clarity surrounding the intercarrier compensation obligations of VoIP traffic has already led to billing disputes and litigation.¹⁸ An IP interconnection mandates that lacks clarity on basic technical/operational issues would likely invite the very same years of uncertainty and create a substantial risk of conflicting policies as parties and state commissions resolve interconnection standards. While state commissions may need to “fill-in-the-blanks” associated with technical standards for IP-to-IP interconnection until the Commission determined it should act, the Nebraska Companies believe that the Commission should nonetheless move forward with such a proceeding to address IP-to-IP technical standards.

For example, one central issue is how IP should replace the functions managed through call signaling rules and network management software in use today such as Common Channel Signaling System No. 7 (“SS7”). “VoIP” is not a single standardized service, but operates using various protocols (such as Session Initiation Protocol or “SIP”) that require a level of network intelligence above that of the basic IP layers. However, even SIP has various releases. SS7 was developed for the TDM world at a time when a relatively centralized industry routinely imposed technical standards. No similar entity exists today, and any effort to create industry-generated standards would likely take years. Without Commission action on basic technical issues, local exchange carriers are likely to be presented with interconnection requests requiring conformity to

¹⁸ See, *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (rel. Feb. 9, 2011) at para 608.

varying VoIP standards, including non-SIP standards. Local exchange carriers should not have to accommodate more than a single VoIP overlay protocol. Even TWTC admits that the Commission should address this issue.¹⁹

VoIP features present additional issues. As set forth in the *Petition*, IP voice service includes many new features not commonly available through TDM interconnection, including “click-to-call conferencing” and “find me/follow me.”²⁰ Many of these features will require, from an operational perspective, the terminating carrier to take action itself, not merely to transmit packets to the terminating end user. Some of those actions have no precedent in current telephone service. If the Commission were to mandate some form of IP interconnection, it is only logical that VoIP providers will seek to have their interconnecting local exchange carriers support these added features. Before prescribing any IP interconnection requirements, however, it would be prudent for the Commission to carefully consider whether support for these added features is included in that obligation.

Third, VoIP services typically contain quality of service management features that manage packet flow and delays. TWTC explains in the *Petition*, for example, that it avoids use of the public Internet for its VoIP services “where undifferentiated packets are

¹⁹ TWTC seems to envision summary treatment of its request without taking any substantial evidence. At one point TWTC asserted that it opposes having the Commission prescribe technical details or interconnection. *Petition* at 21. Nevertheless, TWTC also asked the Commission to establish a “duty to preserve, transmit and accept signaling and other necessary information.” *Id.* It is not clear how merely “accepting” or “transmitting” such information would suffice if the information itself implied some network management function such as to transmit caller identification information, to interrupt a call, or to conference in a second terminating number.

²⁰ TWTC admits that many SIP features do not map directly onto SS7 protocols. *See Petition*, McNamara affidavit at 5.

transported as equals.”²¹ It is likely that local exchange carriers, particularly those that install their own IP networks, will be presented with quality of service (“QoS”) demands by competitive local exchange carriers and interexchange carriers. Indeed, TWTC admits that it seeks to have ILECs “provide and accept SIP signaling and QoS to or from TWTC or any other requesting carrier.”²² Again, however, before prescribing any such IP interconnection requirement, the Commission should carefully consider what QoS standards, if any, are included in that obligation.

V. CONCLUSION

For all of the reasons provided in these Comments, the Nebraska Companies respectfully submit that the Commission should take action on the *Petition* in a manner consistent with these Comments. Specifically, the Commission should immediately rule IP voice service to be a telecommunications service. This will allow state commission’s to move forward with resolving compensation, technical and operational issues regarding IP interconnection under the section 251/252 process envisioned by the Act.

If the Commission is not willing to make this ruling based on the *Petition*, then for the reasons stated herein the Commission will need to engage in a comprehensive rulemaking proceeding with certain policy pronouncements suggested by the Nebraska Companies regarding cost recovery and intercarrier compensation so as to properly focus such proceedings. Such proceeding should commence immediately and be recognized in

²¹ *Petition* at 8; *see also id.*, McNamara affidavit at 2.

²² *Id* at 23. TWTC argues that QoS is required of all LECs because Verizon and AT&T are providing it for themselves. That is hardly a sufficient basis in law to mandate this potentially costly service for more than 1,000 other local exchange carriers. Moreover, QoS is a quantitative service with different service levels. TWTC has not even stated what kinds of guarantees it seeks for timely packet delivery.

any order the Commission may issue in the near future on comprehensive intercarrier compensation and universal service reforms.

Dated: August 15, 2011.

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Respectfully submitted,

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